Filed 5/23/11; part. pub. order 6/20/11 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

YAN SUI, Plaintiff and Appellant, v. STEPHEN D. PRICE et al., Defendants and Respondents.	G044185 (Super. Ct. No. 30-2010-00353446) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila Fell, Judge. Affirmed.

Yan Sui, in pro. per., for Plaintiff and Appellant.

Bonne, Bridges, Mueller, O'Keefe & Nichols, Margaret M. Holm, Robert A. Zermeno, Jr., and Anne K. Bagley for Defendants and Respondents.

* * *

Plaintiff Yan Sui appeals from the judgment dismissing with prejudice his action against defendants Stephen D. Price and 2176 Pacific Homeowners Association after the court sustained without leave to amend defendants' demurrer to plaintiff's complaint. The court ruled the complaint did not state facts sufficient to constitute a cause of action and could not be fixed. We affirm.

FACTS

Accepting "as true all material allegations of the complaint" (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 929), we draw the following facts from plaintiff's complaint.

The case involves plaintiff's 1987 Mitsubishi van, which was registered in the name of his wife, Pei-yu Yang. From 1995 to 2003, plaintiff used the van to drive his family, including three young children, to various destinations, including to school, local parks, and vacation spots. Plaintiff also used the van to make deliveries for a printing brokerage business.

In 2003, the van's engine broke down. From 2003 to February 2007, plaintiff kept the inoperable, locked van parked in his exclusive parking space between units C and D. Plaintiff's family, including his children, developed a "strong bond" with the van. It was part of their "family, just like some people with their pets." The van served as a memory of the good times the family had experienced.

From 2005 to 2006, Michelle J. Matteau parked her boat in her parking space between units B and C. Her tenants at that time parked their car behind the boat in violation of the homeowners' association's CC&R's. Matteau's tenants' car blocked plaintiff's car from going in and out of the garage. Plaintiff complained to the then president of the association, Sean Wiggins, and asked Wiggins to have Matteau remove the boat. Matteau removed her boat.

In late 2006, Price, the current president of the homeowners' association commenced the process to amend the association's parking rule, assisted by the law firm of Harkins. Price e-mailed the amended parking rule to all the homeowners. The amendment primarily revised two provisions. It made parking in front of a garage permissible, and prohibited disabled, inoperable vehicles. Plaintiff believed Price was exercising personal retaliation against him, but Price denied the allegation.

In about December 2006, Price informed the homeowners that the amended parking rule had been approved by majority vote and was "immediately effective." Plaintiff voiced his opposition and asked to see the voting record. Price claimed plaintiff was ineligible to view the record because he was not a board member.

Defendants' claim that the amended parking rule was "immediately effective" was false, because the amended parking rule had not yet been recorded with the county, as required under the Davis-Stirling Act section 1355, subdivision (b), cited in *Villa De Las Palmas Homeowners Assn*. (2004) 33 Cal.4th 73, 82-83.

In January 2007, Price walked uninvited onto plaintiff's exclusive parking space and placed a warning sticker on the back windshield of the van. Plaintiff walked out and warned Price not to touch plaintiff's property. Price replied, "I am not touching it," and left plaintiff's parking space. The warning on the sticker stated in relevant part, "Your vehicle was in violation of the parking rule and you shall tow it away in X days. If XXX fail to do so, XXX will tow it away."

In February 2007, plaintiff was sick and taking a nap when one of his children told him a tow truck was there to tow the van. Plaintiff went to the parking space and saw a tow truck with the logo "South Coast Towing" parked by his van. The operator said he was towing the van away at the association's request. Plaintiff noticed Price and Matteau watching from a distance, smiling, along with other neighbors.

Plaintiff's children waved protest signs, which said "get a life," at Price and Matteau. His wife asked them to use their energy to make some babies. A police officer

came to the scene apparently at Price and Matteau's behest. Plaintiff controlled his anger rather than escalate the confrontation. Price and Matteau used their position with the homeowners' association to humiliate plaintiff in front of his children for his inability to protect his personal property.

About two months later, plaintiff's wife received a bill from a collection agency for about $1,700.00. This charge impacted the credit standing of plaintiff and his wife. Their application to refinance the house was denied and the wife's application for a credit card was denied. Their credit report showed the wife had an "open collection account" from May of 2007 of about $2,000.

Recently, plaintiff insisted on seeing the voting records on the parking rule amendment. Price claimed the parking rule was not amended and that no amendment was necessary in order to tow away plaintiff's van.

Defendants intentionally engaged in wrongful and despicable conduct with conscious disregard of plaintiff's rights and with the intention to injure him. Defendants caused injury to plaintiff and his family. Defendants' willful misconduct was intended to retaliate against and to humiliate plaintiff. Defendants' wrongful acts constitute oppression, fraud, or malice under Civil Code section 1572, entitling plaintiff and his family to punitive damages.

Based on these asserted facts, plaintiff filed his complaint on March 15, 2010 against Price, the homeowners' association, and Doe defendants, alleging causes of action for fraud, breach of contract, conspiracy to defraud, trespassing, intentional infliction of emotional distress, violation of due process, conversion, libel of character, and declaratory relief. Plaintiff sought compensatory, incidental, and consequential damages of $2,000 and punitive damages of $58,000.

Defendants demurred on April 28, 2010 on grounds the causes of action were factually insufficient, vague, and as to some of plaintiff's claims, barred by the statute of limitations.

The court issued a written order sustaining the demurrer without leave to amend on grounds the complaint "has not stated facts sufficient to constitute a cause of action, and there is no way to fix the [c]omplaint." Judgment was entered against plaintiff and his action was dismissed.

DISCUSSION

Standard of Review

"'Because a demurrer both tests the legal sufficiency of the complaint and involves the trial court's discretion, an appellate court employs two separate standards of review on appeal. [Citation.] . . . Appellate courts first review the complaint de novo to determine whether or not the . . . complaint alleges facts sufficient to state a cause of action under any legal theory, [citation], or in other words, to determine whether or not the trial court erroneously sustained the demurrer as a matter of law.'" (*Filet Menu, Inc. v. Cheng* (1999) 71 Cal.App.4th 1276, 1279-1280 (*Filet*).) "'A demurrer tests the pleading alone, and not the evidence or the facts alleged.' [Citation.] For that reason, we 'assume the truth of the complaint's properly pleaded or implied factual allegations.' [Citation.] We also 'consider judicially noticed matters.'" (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315 (*E-Fab*).) "Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*).) We do not assume the truth of pleaded "'contentions, deductions or conclusions of fact or law.'" (*Ibid*.) "Because [defendant] was denied leave to amend we construe [the complaint's] allegations liberally 'with a view to substantial justice between the parties.'" (*CAMSI IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1530).) "[I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) The plaintiff

"bears the burden of demonstrating that the trial court erroneously sustained the demurrer as a matter of law" and "must show the complaint alleges facts sufficient to establish every element of [the] cause of action." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.)

"'Second, if a trial court sustains a demurrer without leave to amend, appellate courts determine whether or not the plaintiff could amend the complaint to state a cause of action.'" (*Filet, supra*, 71 Cal.App.4th at p. 1280.) "[W]e decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank, supra*, 39 Cal.3d at p. 318.)

Defendants contend that six of plaintiff's causes are barred by the applicable statute of limitations. Although the court did not expressly rely on that ground in its written order sustaining the demurrer,[1] our job is to "determine whether any of the grounds raised by the defendant's demurrer justifies the court's ruling." (*B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 959.) In other words, "we review the validity of the ruling and not the reasons given." (*Ibid*.) Because defendants make an overarching statute of limitations argument, we review briefly the applicable law.

"'The defense of statute of limitations may be asserted by general demurrer if the complaint shows on its face that the statute bars the action.' [Citation.] . . . 'In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows merely that the action may be barred.'" (*E-Fab, supra*, 153 Cal.App.4th at pp. 1315-1316.) In assessing whether plaintiff's claims against defendant are time-

[1] The court's tentative ruling, posted on the Internet, stated, inter alia: "Statute of limitations has run as to any possible . . . claims."

barred, two basic questions drive our analysis: (a) What statutes of limitations govern the plaintiff's claims? (b) When did the plaintiff's causes of action accrue?" (*Id.* at p. 1316.) "The applicable statute of limitations depends on 'the nature of the cause of action, i.e., the "gravamen" of the cause of action.'" (*Ibid.*)

Here, as to those causes of action for which the statute is raised as a defense, the accrual date is February 2007, when plaintiff's van was towed.

Plaintiff Failed to State Facts Constituting a Cause of Action for Fraud

As to the fraud cause of action, the complaint alleged that defendants purported to amend the parking rule, falsely claimed the amended rule was "immediately effective," refused to provide the voting record to plaintiff, and caused injury to plaintiff's property by depriving its owner of its benefits within the meaning of Civil Code section 28.

To state a fraud cause of action, plaintiff must allege, with particularity (*Committee On Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216, superseded by statute on another point as stated in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 228), that he detrimentally relied on an intentional misrepresentation made by defendants (*Vega v. Jones, Day, Reavis & Pogue* (2004) 121 Cal.App.4th 282, 291). "[E]very element of a cause of action for fraud must be alleged both factually and specifically, and the policy of liberal construction of pleadings will not be invoked to sustain a defective complaint." (*Cooper v. Equity Gen. Insurance* (1990) 219 Cal.App.3d 1252, 1262.)

Plaintiff's fraud allegations are the antithesis of the well-worn particularity requirements for pleading a fraud cause of action.

Glaringly absent from the allegations of the complaint are *any* facts suggesting that plaintiff relied on the alleged false representation to his detriment. Indeed, plaintiff alleges facts establishing an *absence* of reliance. Plaintiff alleges that

when defendants circulated the email to the homeowners stating the amended parking rule was "'immediately effective,'" he "asserted his opposition and indicated to challenge such amendment at the court of law." In other words, plaintiff alleges he did not *believe* the amended rule was immediately effective. Moreover, plaintiff's alleged conduct in failing to remove his disabled vehicle for some two months constitutes an additional fact showing a lack of reliance. Had he believed the representation, reasonable reliance would have led to his voluntary removal of the vehicle before it was towed. Plaintiff's failure to believe the representation is the opposite of reliance. On appeal plaintiff attempts to rescue his defective allegation by arguing he relied on the representation that the rule was immediately effective because he "did not block the towing . . . ." In other words, defendant did not breach the peace because he was relying on a false statement that the parking rule was in effect. This attempt to rescue the complaint fails, as these proposed facts are directly contrary to the facts alleged in the challenged pleading. "[A] plaintiff may not discard factual allegations of a prior complaint, or avoid them by contradictory averments, in a superseding, amended pleading." (*California Dental Assn. v. California Dental Hygienists' Assn.* (1990) 222 Cal.App.3d 49, 53, fn. 1.)

In sum, plaintiff's fraud claim fails to state facts sufficient to constitute a cause of action and plaintiff has failed to establish that his complaint can be successfully amended.

Plaintiff Failed to State Facts Constituting a Cause of Action for Breach of Contract

As to the breach of contract cause of action, the complaint alleged that defendants violated the association's CC&Rs (a contract between him and the association)[2] by: discriminating against him in violation of article VI, section 3 (Association Rules) of the CC&R's (since he was the only homeowner with a disabled

[2] Plaintiff does not allege Price is a party to the contract.

vehicle at that time); enforcing the CC&R's by inappropriate means in violation of article VI, section 1 (General Duties and Powers) of the CC&R's; and permitting parking in front of garage doors through the purported amendment in violation of article XI, section 5 of the CC&R's.

First, as to the discrimination claim, plaintiff alleges that article VI, section 3 of the CC&Rs provides "[t]hat the Association Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws." Plaintiff alleges he is the only homeowner with a disabled vehicle, and, because "other owners did not have a disabled vehicle at that time[the rule] amendment was taylor-made [*sic*] for Plaintiff's van." But the alleged parking rule does not single out plaintiff. It is equally applicable to all homeowners. True, an operating rule of a homeowner's association must be tethered to reasonableness, just like the CC&Rs. (See Civ. Code, § 1357.110, subd. (e) [operating rule must be reasonable]; § 1354 [CC&Rs are enforceable unless unreasonable].) Whether a rule is reasonable "is to be determined *not* by reference to facts that are specific to the objecting homeowner, but by reference to the common interest development as a whole." (*Nahrstedt v. Lakeside Village Condominium Assn*. (1994) 8 Cal.4th 361, 386 [pet restriction prohibiting cats or dogs but allowing other pets was reasonable].) Use restrictions in CC&Rs "should be enforced unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs any benefit." (*Id*. at p. 382.) We see no reason to apply a different test for reasonableness of an association's operating rules, especially since a rule adopted by the association's board may be reversed by majority vote of the homeowners at a meeting called on petition of only 5 percent of the separate interests in the association. (Civ. Code, § 1357.140.) Simply put, there is nothing unreasonable about prohibiting the open, long-term parking of disabled vehicles. The association was perfectly reasonable in prohibiting this unsightly intrusion upon the aesthetics of their common interest development.

Second, as to the alleged breach of contract by inappropriate enforcement of the rules, plaintiff alleges that article VI of the CC&Rs provides in part that the board's duties include the enforcement of the "Association Rules . . . by appropriate means." Although plaintiff does not explicitly say what *inappropriate* means were employed, presumably he means the towing of his disabled vehicle. One wonders — how else would the prohibition on parking disabled vehicles be enforced against a recalcitrant homeowner? Moreover, Vehicle Code section 22658, subdivision (a), permits an association of a common interest development to remove a vehicle parked on the property under a variety of circumstances, including the giving of notice of the parking violation, and the lapse of 96 hours after such notice. (*Id*., subd. (a)(2).) Plaintiff does not allege, nor does he offer to allege, that the provisions of Vehicle Code section 22658 were violated. Thus, it is not inappropriate to enforce a parking rule in the manner authorized by law.

Finally, plaintiff alleges a breach of article XI, section 5 of the CC&Rs. Plaintiff failed to allege what article XI, section 5 provides. That alone would be sufficient to sustain the demurrer. It is impossible to rule on an alleged breach without knowing what promise was not kept. Plaintiff's complaint does go on to allege that the parking rules were void because they were not recorded with the county. There is no requirement that operating rules of an association be recorded. (See Civ. Code, § 1357.110 [listing requirements for the validity and enforceability of operating rules].) Plaintiff does not allege anywhere in his complaint that the CC&Rs were amended, which, of course, would require recordation.[3] (See Civ. Code, § 1355, subd. (a).)

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[3] It does not appear the complaint can be amended on this point. Plaintiff attached to his opening brief on appeal a copy of Price's e-mail dated September 8, 2009, which stated: "The CC&R's were not amended, an amendment is not required in order to adopt rules to address the parking problem. All the procedures laid out in section 1357.130 of the Civil Code were adhered to in adopting the rules in regards to parking. . . . You were notified of the change, given a copy of the new rules, asked to move the van numerous times and finally, notice was placed on your van prior to towing.

The demurrer to the breach of contract cause of action was properly sustained without leave to amend.

There is no Cause of Action for Conspiracy to Defraud

Plaintiff's conspiracy to defraud cause of action alleged defendants conspired with their agent, South Coast Towing, to: falsely accuse plaintiff of violating the invalid and ineffective parking rule, fraudulently claim the amended parking rule was "immediately effective," tow away the van, defraud plaintiff by demanding money, and falsely lodge a debt against plaintiff's wife with a credit report agency. These allegations are premised on plaintiff's allegations of actionable fraud in his first cause of action. Thus, plaintiff's conspiracy to commit fraud cause of action is factually insufficient for the same reasons his fraud cause of action is insufficient. "[T]here is no civil action for conspiracy to commit a recognized tort unless the wrongful act itself is committed . . . ." (5 Witkin, Summary of Cal. Law, Torts (10th ed. 2005) Torts, § 45, p. 111.) The demurrer was properly sustained without leave to amend.

Plaintiff's Trespass Cause of Action is Time Barred

The complaint alleged defendants' fraudulent amendment of the parking rules, as well as the association's forceful and unlawful towing away of the van, constituted trespassing onto his property because under the association's CC&R's, plaintiff is the exclusive owner of the parking space between units C and D. We need not address whether plaintiff alleged facts meeting all elements of the cause of action because his claim is barred by the statute of limitations. Under Code of Civil Procedure section 338, subdivision (b), the statute of limitations for trespass upon real property is three years, and under Code of Civil Procedure section 338, subdivision (c), the statute of

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All legal requirements were met prior to towing your van." Plaintiff does not offer to allege that the CC&Rs were invalidly amended.

limitations for the taking, detaining, or injuring goods or chattels is similarly three years. Plaintiff's van was towed in February 2007. His complaint was not filed until March 15, 2010, more than three years after accrual of his trespass cause of action. The demurrer was properly sustained without leave to amend.

Plaintiff's Intentional Infliction of Emotional Distress Cause of Action is Time Barred

The complaint alleged defendants and their agent intentionally inflicted emotional distress by fraudulently amending the parking rules in order to tow away plaintiff's van, towing away plaintiff's van, charging plaintiff storage fees and fees to auction the van, threatening to report the alleged debt to a credit reporting agency, causing plaintiff property and monetary damages, trespassing onto defendant's parking space and taking his van in daylight in front of a small group of people from the neighborhood, maliciously humiliating plaintiff and his family in public, and causing plaintiff's children to question the value of American rights.

We need not address whether plaintiff alleged facts meeting all elements of this cause of action because his claim is barred by the statute of limitations. Under Code of Civil Procedure section 335.1, the statute of limitations is two years for injury to an individual caused by the wrongful act of another. Thus, plaintiff's intentional infliction of emotional distress claim is barred by the statute of limitations and the demurrer was properly sustained without leave to amend.

Plaintiff Failed to State Facts Constituting a Cause of Action for Violation of Due Process

Plaintiff alleged defendants "violated due process" by fraudulently amending the parking rules in order to tow away plaintiff's van, refusing to provide the purported voting records, failing to distribute a copy of the recorded amendment, refusing to verify the validity of the amendment at plaintiff's request, and giving the order to the

tow truck operator to tow plaintiff's van. He asserts the association acted in the capacity of a quasi or mini government.

Plaintiff has failed to state facts constituting a cause of action for violation of his alleged constitutional right to due process. "It is well settled that the only conduct proscribed by the due process clause of the Fourteenth Amendment of the United States Constitution is conduct that may fairly be attributed to the states. [Citation.] Essentially the same may be said with respect to the reach of the corresponding procedural due process provision of our state Constitution . . . . (*Martin v. Heady* (1980) 103 Cal.App.3d 580, 586-587.) Plaintiff's assertion that the association acted as a quasi or mini government, thereby according him the right to sue the association for a constitutional tort, is a legal conclusion; moreover, it is unsupported by his cited authority, viz. *Duffey v. Superior Court* (1992) 3 Cal.App.4th 425 and *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642. Neither of these cases involved a suit for damages against a homeowners' association for deprivation of due process; the courts had no occasion to discuss the issue. It is axiomatic that "cases are not authority for propositions not considered therein." (*Johnson v. Bradley* (1992) 4 Cal.4th 389, 415.) Plaintiff has failed to provide reasoned argument and legal authority to support his due process contention. We treat the argument as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

Plaintiff's Conversion Cause of Action is Time Barred

Plaintiff alleged defendants' wrongful towing away of the van constituted conversion because they knew the van belonged to plaintiff, "wrongfully towed it away, took possession of it, and presumably sold it," causing both mental distress and monetary damages to plaintiff and his family.

We need not address whether plaintiff alleged facts meeting all elements of the cause of action because his claim is barred by the statute of limitations. Under Code of Civil Procedure section 338, subdivision (c)(1), the statute of limitations is three years

for taking or detaining any goods or chattels. Plaintiff's conversion claim is barred by the statute of limitations.

Plaintiff's Cause of Action for Libel of Character is Time Barred

Plaintiff alleged defendants committed libel of character by wrongfully towing away the van and falsely reporting a debt against plaintiff's wife, and which caused the March 2010 application of plaintiff and wife to refinance their house, along with the March 2010 application of plaintiff's wife's for a credit card, to be turned down. But plaintiff also alleges that he first received a bill from a collection agency two months after the van was towed, and that a credit report he received from a mortgage broker showed the "open collection account" from May of 2007.

We need not address whether plaintiff alleged facts meeting all elements of the cause of action because his claim is barred by the statute of limitations. Under Code of Civil Procedure section 340, subdivision (c), the statute of limitations is one year for libel. According to plaintiff's complaint, the alleged libel occurred in or about May 2007, nearly three years before plaintiff filed his complaint. "[A] cause of action for defamation accrues at the time the defamatory statement is 'published' . . . ." (*Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1247.) "[P]ublication occurs when the defendant communicates the defamatory statement to a person other than the person being defamed." (*Ibid*.) Plaintiff's libel claim is barred by the statute of limitations.

Plaintiff Failed to State Facts Constituting a Cause of Action for Declaratory Relief

Plaintiff alleged an actual controversy exists between defendants and him on whether defendants had the right to tow away the van, whether the negative credit reporting was proper under the circumstances, and whether defendants should be ordered to remove the negative credit reporting against plaintiff's wife.

"""The fundamental basis of declaratory relief is an actual, present controversy." [Citation.] An actual controversy is "one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts.""" (*Taxpayers for Improving Public Safety v. Schwarzenegger* (2009) 172 Cal.App.4th 749, 768.) """Strictly speaking, a general demurrer is not an appropriate means of testing the merits of the controversy in a declaratory relief action because plaintiff is entitled to a declaration of his rights even if it be adverse." [Citations.] However, "where the issue is purely one of law, if the reviewing court agreed with the trial court's resolution of the issue it would be an idle act to reverse the judgment of dismissal for a trial on the merits. In such cases the merits of the legal controversy may be considered on an appeal from a judgment of dismissal following an order sustaining a demurrer without leave to amend and the opinion of the reviewing court will constitute the declaration of the legal rights and duties of the parties concerning the matter in controversy.""" (*Id*. at p. 769.)

Here, the van has already been towed and the negative credit report made. Plaintiff does not allege that defendants (Price and the association) have the ability to remove the negative credit reporting. Moreover, as discussed above, plaintiff has failed to allege facts showing his van was improperly towed and that the negative credit report should be removed, if such removal were possible.

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

YAN SUI, Plaintiff and Appellant, v. STEPHEN D. PRICE et al., Defendants and Respondents.	G044185 (Super. Ct. No. 30-2010-00353446) ORDER GRANTING PARTIAL PUBLICATION

Fiore Racobs & Powers and Peters & Freedman L.L.P. have requested that our opinion, filed on May 23, 2011, be certified for publication. It appears that portions of our opinion meet the standards set forth in California Rules of Court, rule 8.1105. The request is GRANTED for partial publication pursuant to California Rules of Court, rule 8.1110.

This opinion is certified for publication with the exception of the following: The third paragraph, fourth paragraph, fifth paragraph, and footnote 1, in the Discussion section under the subheading titled *Standard of Review*; the entire sections under the following subheadings titled; *Plaintiff Failed to State Facts Constituting a Cause of Action for Fraud*; *There is no Cause of Action for Conspiracy to Defraud*; *Plaintiff's Trespass Cause of Action is Time Barred; Plaintiff's Intentional Infliction of Emotional*

Distress Cause of Action is Time Barred; *Plaintiff Failed to State Facts Constituting a Cause of Action for Violation of Due Process*; *Plaintiff's Conversion Cause of Action is Time Barred*; *Plaintiff's Cause of Action for Libel of Character is Time Barred*; *Plaintiff Failed to State Facts Constituting a Cause of Action for Declaratory Relief*.

Renumbering of footnotes is required.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.